THE MAINE HERITAGE POLICY CENTER
SAM ADOLPHSEN, DIRECTOR - CENTER FOR OPEN GOVERNMENT
PUBLIC TESTIMONY
BULK RECORDS SUBCOMMITTEE OF RIGHT TO KNOW ADVISORY COMMITTEE
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Good Morning, Mr. Cianchette, Representative Nass, members of the bulk record subcommittee. My name is Sam Adolphsen and I direct the Center for Open Government at the Maine Heritage Policy Center. I appreciate the opportunity to testify on this issue. Inviting the public to be a part of this process is fitting, since we are talking about open records.

Following up on that sentiment, I would say that with the many questions posed in this committee about definitions, costs, timelines, etc...must all be considered with the understanding that this data being discussed—whether it is electronic or paper, bulk database or a one-page document—is the public's data. It is owned by the people, not the government. The government's role is as a keeper and a steward of the information, not as the owner.

I want to try today to help provide some additional perspective as you attempt to answer some of the questions that have been raised by members of this committee regarding bulk public records.

One of the first questions raised is whether bulk records and electronic records are the same thing. The answer is a simple No. "Electronic" is a form of a record. I have seen records requested, and provided, in electronic format that contained only a few rows of data, and would in no way qualify as "bulk." It's almost always easier and more cost effective to provide records in this way, simply e-mailing the data, versus printing, stuffing, stamping, sealing and mailing an envelope. Just because data is provided by electronic transfer in no way means it is the same thing as a bulk record.

Another key point that has been raised is the issue of having a different set of rules for commercial users of public data versus non-commercial users. I'm not going to try and tell you the right or wrong way to handle this, because I' m not sure what it is. But I will say this – when I drive down Route 3 to Augusta every morning, I'm not stopped by a government official who asks me if I'm driving the public road for commercial uses or my own private use. Those roads are funded with tax dollars, and they are open to the public – for whatever purpose. Public records are public property, no different than a road. If government creates a litmus test for public records requests, government transparency is severely undermined. From a fiscal perspective, let's remember that someone profiting from the commercial distribution of public information will pay their fair share back to the state in taxes.

Lastly, there can be no question that the answer to most, if not all the issues related to bulk public records lies with harnessing the power of technology. In my research of state Freedom of

Access Laws across the country, I have found several states with specific provisions stating that government entities, when purchasing or upgrading data management software, are required to have a process in place to make sure the entity can easily run reports to provide the data to the public when requested, and ensure they can easily parse out public versus confidential components of the data. Connecticut, for instance, says in statute "Agencies shall consider rights of the public when acquiring new computer system/software at the least cost possible to the agency and requester." Minnesota's law says "The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use."

What I have heard from government agencies, including, recently, the Maine State Housing Authority, is that the real roadblock for providing "bulk" public records to the public is that they have to vet the data to make sure they aren't releasing confidential information. This time-consuming challenge is easily overcome with software—like Microsoft Excel or Apple's Numbers—that can parse out pieces identified an organized as confidential before the requested report is run. Going forward; ease of public access must be a mandated component of any software purchasing decision.

Technology is also the way for government to become proactively transparent. If government agencies would simply take the public records they have, redact any confidential information and post the records online, then any time a request was made for that data, the agency could simply direct folks to that information. This is the ultimate answer to streamlining records request – use the power of technology and the internet to put everything where the public can access it. It would make for a more transparent government, and far less staff time in the long-term dealing with requests.

Finally, I'd like to say that in sitting in several of these open records committee meetings, I have heard the phrase "burden on government" repeated several times. This phrase is disappointing. Government exists for one reason; to serve the public. Providing the public with the records they own is part of the job. I am all for creating efficiencies in government, including in their role as stewards of public records, but we can never sacrifice openness and transparency in an effort to relieve "the burden on government."

Thank you for your time, and I appreciate you all working on this important issue.